

MDR Tracking Number: M5-05-1311-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution - General and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division (Division) assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. The dispute was received on 1-6-05.

The Division has reviewed the enclosed IRO decision and determined that **the requestor did not prevail** on the majority of the medical necessity issues. Therefore, the requestor is not entitled to reimbursement of the IRO fee.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

The chiropractic manipulative therapies – spinal, 1-2 areas (CPT code 98940) from 4-27-04 through 5-25-04 **were found** to be medically necessary. The chiropractic manipulative therapies – spinal, 1-2 areas (CPT code 98940) after 5-25-04, other chiropractic manipulative treatments, manual therapy, mechanical traction, electrical stimulation, neuromuscular re-education, therapeutic exercises, therapeutic activities, ultrasound therapy, office visits, and group therapeutic activities from 4-27-04 through 5-25-04 **were not found** to be medically necessary. The respondent raised no other reasons for denying reimbursement for the above listed services. The amount due the requestor for the medical necessity issues is **\$369.71**.

Based on review of the disputed issues within the request, the Medical Review Division has determined that medical necessity issues were not the only issues involved in the medical dispute to be resolved. This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division.

On 3-2-05, the Medical Review Division submitted a Notice to the requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14 days of the requestor's receipt of the Notice.

CPT code 97012 on 4-30-04 was denied as "F" – Fee Guideline MAR Reduction. In accordance with Rule 133.307 (g)(3)(A-F), the requestor submitted relevant information to support delivery of service and the carrier did not reimburse partial payment or give a rationale for not doing so. **Reimbursement is recommended in the amount of \$19.21.**

Regarding CPT code 97012 on 5-3-04 - Neither the carrier nor the requestor provided EOB's. The requestor submitted convincing evidence of carrier receipt of provider's request for an EOB in accordance with 133.307 (e)(2)(B). Respondent did not provide EOB's Per Rule 133.307(e)(3)(B). **Recommend reimbursement of \$19.21.**

Regarding CPT code 97035 on 5-4-04 - Neither the carrier nor the requestor provided EOB's. The requestor submitted convincing evidence of carrier receipt of provider's request for an EOB in accordance with 133.307 (e)(2)(B). Respondent did not provide EOB's Per Rule 133.307(e)(3)(B). **Recommend reimbursement of \$15.83.**

CPT code 97140 on 5-20-04 was denied as "R" – extent of injury. On 4-9-04 the parties agreed per a Benefit Dispute Agreement that the "claimant sustained a lumbar injury on ____." The diagnosis codes for the services on these dates were 953.2 – Lumbar Root Injury and 846.1 – Sprain Sacroiliac. These services were compensable. **Recommend reimbursement of \$34.12.**

CPT code 98940 on 5-20-04 was denied as "R" – extent of injury. On 4-9-04 the parties agreed per a Benefit Dispute Agreement that the "claimant sustained a lumbar injury on ____." The diagnosis codes for the services on these dates were 953.2 – Lumbar Root Injury and 846.1 – Sprain Sacroiliac. These services were compensable. **Recommend reimbursement of \$33.61**

CPT code 97112 on 5-20-04 (2 units) and 5-28-04 (2 units) was denied as "R" – extent of injury. On 4-9-04 the parties agreed per a Benefit Dispute Agreement that the "claimant sustained a lumbar injury on ____." The diagnosis codes for the services on these dates were 953.2 – Lumbar Root Injury and 846.1 – Sprain Sacroiliac. These services were compensable. **Recommend reimbursement of \$148.20 (\$74.10 X 2 DOS).**

CPT code 97530 on 5-20-04 and 5-27-04 was denied as "R" – extent of injury. On 4-9-04 the parties agreed per a Benefit Dispute Agreement that the "claimant sustained a lumbar injury on ____." The diagnosis codes for the services on these dates were 953.2 – Lumbar Root Injury and 846.1 – Sprain Sacroiliac. These services were compensable. **Recommend reimbursement of \$75.16 (\$37.58 X 2 DOS).**

CPT code 97110 on 5-20-04, 5-27-04, and 5-28-04 was denied as "R" – extent of injury. Recent review of disputes involving CPT Code 97110 by the Medical Dispute Resolution section indicate overall deficiencies in the adequacy of the documentation of this Code both with respect to the medical necessity of one-on-one therapy and documentation reflecting that these individual services were provided as billed. Moreover, the disputes indicate confusion regarding what constitutes "one-on-one." Therefore, consistent with the general obligation set forth in Section 413.016 of the Labor Code, the Medical Review Division has reviewed the matters in light all of the Commission requirements for proper documentation. The MRD declines to order payment because the SOAP notes do not clearly delineate exclusive one-on-one treatment nor did the requestor identify the severity of the injury to warrant exclusive one-to-one therapy. **Reimbursement not recommended.**

CPT code 98941 on 5-27-04 was denied as "R" – extent of injury. On 4-9-04 the parties agreed per a Benefit Dispute Agreement that the "claimant sustained a lumbar injury on ____." The diagnosis codes for the services on these dates were 953.2 – Lumbar Root Injury and 846.1 – Sprain Sacroiliac. These services were compensable. **Recommend reimbursement of \$46.48.**

CPT code 95903 on 5-28-04 was denied as "R" – extent of injury. On 4-9-04 the parties agreed per a Benefit Dispute Agreement that the "claimant sustained a lumbar injury on ____." The diagnosis codes for the services on these dates were 953.2 – Lumbar Root Injury and 846.1 – Sprain Sacroiliac. These services were compensable. **Recommend reimbursement of \$288.90.**

CPT code 95904 on 5-28-04 was denied as "R" – extent of injury. On 4-9-04 the parties agreed per a Benefit Dispute Agreement that the "claimant sustained a lumbar injury on ____." The diagnosis codes for the services on these dates were 953.2 – Lumbar Root Injury and 846.1 – Sprain Sacroiliac. These services were compensable. **Recommend reimbursement of \$276.00.**

CPT code 95934 on 5-28-04 was denied as "R" – extent of injury. On 4-9-04 the parties agreed per a Benefit Dispute Agreement that the "claimant sustained a lumbar injury on ____." The diagnosis codes for the services on these dates were 953.2 – Lumbar Root Injury and 846.1 – Sprain Sacroiliac. These services were compensable. **Recommend reimbursement of \$23.78.**

CPT code 99213 on 5-28-04 was denied as "R" – extent of injury. On 4-9-04 the parties agreed per a Benefit Dispute Agreement that the "claimant sustained a lumbar injury on ____." The diagnosis codes for the services on these dates were 953.2 – Lumbar Root Injury and 846.1 – Sprain Sacroiliac. These services were compensable. **Recommend reimbursement of \$68.24.**

On this basis, and pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the Respondent to pay the unpaid medical fees totaling \$1,048.74 from 4-27-04 through 5-28-04 outlined above as follows:

- In accordance with Medicare program reimbursement methodologies for dates of service on or after August 1, 2003 per Commission Rule 134.202 (c);
- plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this Order.

The amount due the requestor for the medical necessity and fee issues is \$1,418.45.

This Decision and Order is hereby issued this 31st day of March 2005.

Donna Auby
Medical Dispute Resolution Officer
Medical Review Division

DA/da

Enclosure: IRO decision

March 22, 2005

Texas Workers' Compensation Commission
Medical Dispute Resolution
Fax: (512) 804-4868

Re: Medical Dispute Resolution
MDR #: M5-05-1311-01
TWCC#:

Injured Employee:
DOI:
SS#:
IRO Certificate No.: IRO 5055

Dear Ms. ____:

IRI has performed an independent review of the medical records of the above-named case to determine medical necessity. In performing this review, IRI reviewed relevant medical records, any documents provided by the parties referenced above, and any documentation and written information submitted in support of the dispute.

I am the Secretary and General Counsel of Independent Review, Inc. and I certify that the reviewing healthcare professional in this case has certified to our organization that there are no known conflicts of interest that exist between him and any of the treating physicians or other health care providers or any of the physicians or other health care providers who reviewed this case for determination prior to referral to the Independent Review Organization.

Information and medical records pertinent to this medical dispute were requested from the Requestor and every named provider of care, as well as from the Respondent. The independent review was performed by a matched peer with the treating health care provider. This case was reviewed by a physician who is licensed in chiropractic, and is currently on the TWCC Approved Doctor List.

Sincerely,

Gilbert Prud'homme
General Counsel

GP:thh

REVIEWER'S REPORT
M5-05-1311-01

Information Provided for Review:

TWCC-60, Table of Disputed Services, EOB's

Information provided by Requestor:

- Correspondence
- Physical therapy notes 04/27/04 – 07/07/04
- Neurodiagnostic study 05/28/04
- Radiology report 05/18/04

Information provided by Respondent:

- Designated doctor review

Clinical History:

Patient is a 50-year-old diabetic male who, on ____, developed "muscle spasms" in his lower back following a work-related accident. Over the next couple of weeks, his pain

reportedly increased, and even started radiating down his left lower extremity. The reports state that he was initially seen in the emergency room and released. On 06/23/03, he presented himself to a doctor of chiropractic who initiated conservative care, including chiropractic and physical therapy, until 8/26/03.

The patient returned to the doctor of chiropractic on 4/27/04, having received no care in the interim, complaining that his leg was "getting smaller." The doctor of chiropractic resumed passive and active therapies, spinal manipulations, and ordered a lumbar MRI as well as EMG/NCV studies. The patient was declared at MMI by a designated doctor on 6/11/04 with a 10% whole-person impairment.

Disputed Services:

Manual therapy, chiropractic manipulative treatment, mechanical traction, electrical stimulation, neuromuscular re-education, therapeutic exercises, therapeutic activities, ultrasound therapy, office visits, group therapeutic activities during the period of 04/27/04 thru 07/07/04.

Decision:

The reviewer partially agrees with the determination of the insurance carrier as follows:

Medically necessary from 04/27/04 through 05/25/04:

Chiropractic manipulative therapies-spinal, 1-2 areas (98940)

Not medically necessary:

Chiropractic manipulative therapies other than those indicated above as medically necessary.

All remaining services and procedures in dispute as stated.

Rationale:

The medical records submitted for review adequately documented that a lower back injury had occurred warranting reasonable follow up treatment. Since chiropractic spinal manipulation yielded the best results for chronic spinal pain according to a study published in *Spine*¹, it was reasonable to resume this form of treatment (chiropractic manipulative therapy, spinal 1-2 areas, 98940) when the patient returned on 04/27/04.

However, the daily records for date of service 04/27/04 were devoid of an appropriate follow up history and reevaluation of the patient. Therefore, not only was there no documented flare-up recorded, but a proper status was not even established on the patient to determine whether the treatment plan that ensued provided functional improvement or not. As a result, no unattended electrical stimulation (G0283) was supported as medically necessary because there was no documented flare-up, and no chiropractic manipulative therapies (98940) past four weeks were supported, since the *Guidelines for Chiropractic Quality Assurance and Practice Parameters*² Chapter 8 under "Failure to Meet Treatment/Care Objectives" states, "After a maximum of two trial therapy series of manual procedures lasting up to two weeks each (four weeks total)

¹ Giles LGF, Muller R. Chronic Spinal Pain - A Randomized Clinical Trial Comparing Medication, Acupuncture, and Spinal Manipulation. *Spine* 2003; 28:1490-1503.

² Haldeman, S; Chapman-Smith, D; Petersen, D *Guidelines for Chiropractic Quality Assurance and Practice Parameters*, Aspen Publishers, Inc.

without significant documented improvement, manual procedures may no longer be appropriate and alternative care should be considered.” Further, the ACOEM

Guidelines³ state that if manipulation does not bring improvement in three to four weeks, it should be stopped and the patient reevaluated. In the absence of appropriate patient evaluation, the doctor failed to substantiate the effectiveness of his treatment regimen. And, since this patient sustained only a lower back injury, neither the medical records nor the diagnosis in this case supported the medical necessity for chiropractic manipulative therapy, spinal 3-4 areas (98941) at *any* time.

In regard to the neuromuscular re-education services (97112-59) that were performed, there was nothing in either the diagnosis or the physical examination findings on this patient that demonstrated the type of neuropathology that would necessitate the application of this service. According to a Medicare Medical Policy Bulletin⁴, “This therapeutic procedure is provided to improve balance, coordination, kinesthetic sense, posture, motor skill, and proprioception. Neuromuscular re-education may be reasonable and necessary for impairments which affect the body’s neuromuscular system (e.g., poor static or dynamic sitting/standing balance, loss of gross and fine motor coordination, hypo/hypertonicity). The documentation in the medical records must clearly identify the need for these treatments.” In this case, the documentation failed to fulfill these requirements, rendering the performance of this service medically unnecessary.

Insofar as the manual therapy techniques (97140-59) were concerned, this procedure was already performed as a component of chiropractic manipulative therapy per CPT⁵. Therefore, the performance of this additional procedure would be duplicative and medically unnecessary on the same patient encounter.

Finally, in terms of the therapeutic exercises (97110) and the therapeutic activities (97530-59), there was no evidence to support the need for monitored therapy at that juncture. Services that did not require “hands-on care” or supervision of a health care provider are not considered medically necessary services *even if* they were performed by a health care provider. In other words, the provider failed to establish why the services were required to be performed one-on-one at that point in the patient’s care (as opposed to a home exercise program), particularly when current medical literature states, “...there is no strong evidence for the effectiveness of supervised training as compared to home exercises.”⁶

³ ACOEM *Occupational Medicine Practice Guidelines: Evaluation and Management of Common Health Problems and Functional Recovery in Workers*, 2nd Edition, p. 299.

⁴ HGSA Medicare Medical Policy Bulletin, Physical Therapy Rehabilitation Services, original policy effective date 04/01/1993 (Y-1B)

⁵ CPT 2004: *Physician’s Current Procedural Terminology, Fourth Edition, Revised*. (American Medical Association, Chicago, IL 1999),

⁶ Ostelo RW, de Vet HC, Waddell G, Kerchhoffs MR, Leffers P, van Tulder M, Rehabilitation following first-time lumbar disc surgery: a systematic review within the framework of the cochrane collaboration. *Spine*. 2003 Feb 1;28(3):209-18.